



U.S. Department of Justice

**National Domestic Communications Assistance Center
Executive Advisory Board**



December 22, 2016

Ms. Alice Bardney-Boose
NDCAC EAB Designated Federal Officer
Federal Bureau of Investigation
Operational Technology Division
Building 27958A
Quantico, Virginia 22135

Dear Alice,

I have reviewed the minutes and hereby certify that they accurately reflect the proceedings from the September 21, 2016 National Domestic Communications Assistance Center (NDCAC) Executive Advisory Board (EAB) meeting held in Alexandria, Virginia.

Sincerely yours,

/s/ Peter Modafferi

Peter Modafferi
Chief of Detectives
Rockland County
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Chairman, NDCAC EAB
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U.S. Department of Justice



National Domestic Communications Assistance Center Executive Advisory Board Meeting Minutes September 21, 2016



The Executive Advisory Board (EAB) of the National Domestic Communications Assistance Center (NDCAC) convened for its first meeting at 12:00 P.M. on September 21, 2016, at the Hilton Marc Center, 5000 Seminary Rd, Alexandria, VA 22311.

The meeting was called to order by the NDCAC EAB Designated Federal Officer (DFO) Alice Bardney-Boose. Ms. Bardney-Boose welcomed all the attendees to the inaugural meeting of the NDCAC EAB and provided a brief overview of the meeting logistics.

Peter Modafferi, Chairman of the NDCAC EAB, provided the group an overview of the meeting agenda (see **Appendix A**) and initiated an introduction of EAB members (see **Appendix B**). Members of the public were also in attendance (see **Appendix C**).

Preston Grubbs, Vice Chairman of the NDCAC EAB, provided Board members and attendees a description of the purpose of the NDCAC as well as the purpose of the NDCAC EAB.

Mr. Grubbs stated that the NDCAC was created as a multi-agency initiative to provide law enforcement at the local, State, or Federal level with lawful electronic surveillance assistance, training, and coordination. The NDCAC is not a center that conducts lawful electronic surveillance but rather stands ready to support law enforcement in that endeavor.

Mr. Grubbs described the purpose of the NDCAC EAB. The EAB was established to provide advice and recommendations to the Attorney General or her designee and to the Director of the NDCAC. The EAB's advice and recommendations promote public safety and national security by advancing the NDCAC's core functions: law enforcement coordination with respect to technical capabilities and solutions, technology sharing, industry relations, and the implementation of the Communications Assistance for Law Enforcement Act (CALEA). Specifically, the Board provides advice and recommendations to the Attorney General or her designee on:

- The selection and appointment of the NDCAC Director and Deputy Directors.
- Trends and developments with respect to existing and emerging communications services and technologies.
- Technical challenges faced by Federal, State, tribal, and local law enforcement agencies with respect to lawfully-authorized electronic surveillance capabilities, evidence collection on communications devices, and technical location capabilities.
- The effective leveraging and exchange of technical information and methods among law enforcement agencies regarding lawfully-authorized electronic surveillance capabilities.
- The effective development of relations between law enforcement agencies and the communication industry.
- The development of standard practices within the law enforcement community.

- Implementation of CALEA and;
- The development of security and privacy policies and other issues relating to the functions, programs and operations of the NDCAC.

In addition to the recommendations that promote public safety and national security, the EAB will assist in shaping the goals and mission of the NDCAC to include guidance to the NDCAC Director on the establishment of policies and procedures to ensure:

- Clarity in roles and responsibilities of the NDCAC;
- Ensure NDCAC focuses on established outcomes and accountability;
- Implement an effective infrastructure for the dissemination of technical information and methods;
- Pursue adequate resources;
- Broker multi-agency participation; and
- Ensure security and privacy policies are adequate.

The EAB will also receive information to review, monitor, and track training provided by or for NDCAC participating law enforcement agencies as well as recommend the development of standard practices for automated capabilities involving industry assistance.

Mr. Grubbs concluded his remarks by stating that the duties of the EAB are solely advisory in nature; the EAB expects to meet at least semiannually; and EAB Subcommittees will meet on an as-needed basis.

Mr. Modafferri acknowledged the efforts of those involved in making the NDCAC and the NDCAC EAB a reality. In particular, Mr. Modafferri recognized Mr. Anthony DiClemente, a retired FBI Deputy Assistant Director in attendance at the meeting, who was a strong proponent of the NDCAC and the role of the law enforcement community in providing advice and recommendations.

Ms. Marybeth Paglino, currently serving as the NDCAC's Interim Director, provided the EAB a presentation about the NDCAC (see **Appendix D**). Ms. Paglino began her presentation with a description of the NDCAC as a national center established under the Department of Justice to leverage and share the collective technical knowledge and resources of the law enforcement community on issues involving real-time and stored communications and to strengthen law enforcement's relationship with industry. She proceeded to describe the focus of the NDCAC as being driven by the technical challenges faced by law enforcement (i.e., lawfully-authorized electronic surveillance capabilities, evidence collection on communications devices, and technical location capabilities).

Ms. Paglino summarized the underlying rationale and need for the NDCAC and provided a brief description of the NDCAC's constituent programs. Ms. Paglino highlighted the functions of the NDCAC's Technical Resource Group, Technology Sharing, Training, Industry Relations, and Solution Verification Programs. Ms. Paglino also highlighted the NDCAC's partnering with the FBI on the implementation of CALEA.

Ms. Paglino cited the NDCAC's ability to serve as an assistance center was based on collaboration among internal and external resources (i.e., NDCAC and law enforcement subject matter experts; relationships with industry; law enforcement requests for assistance; internal research and analysis into emerging technologies and mobile communications services; and open source information). Ms. Paglino concluded her presentation by describing the kinds of activities that were beyond the scope of the NDCAC (i.e., execution of any court orders, having any direct investigative role, conducting robust research and development, and sponsoring or directing direct funding or grants to law enforcement).

Mr. Modafferri inquired of Ms. Paglino if the NDCAC was going to continue interacting with the Law Enforcement Executive Forum (LEEF) and the Law Enforcement Technical Forum (LETF) as well as sponsoring the Technical Fellowship Program (TFP). Ms. Paglino affirmed the NDCAC's commitment to continue utilizing the LEEF and LETF as valuable sources of information and continuing to sponsor the TFP.

Mr. Modafferri continued the meeting with remarks focused on his thoughts on the role of the NDCAC and how it can impact the work of local, State and Federal law enforcement agencies as they attempt to afford the communities they serve with justice and public safety. Mr. Modafferri shared his thoughts about current misconceptions of crime – how the very nature of crime has changed based on a continually evolving world of technology that represents a wide and varied source of new opportunities and techniques to commit crime; and how current methods of measuring crime are insufficient without a statistic (e.g., arrest or identified victim). Mr. Modafferri's second topic of concern centered on wrongful convictions and the role various factors (e.g., police mistakes; victim and witness confusion; and inaccurate forensics) played in an initial wrongful arrest.

Mr. Modafferri stated his belief that the NDCAC will assist law enforcement in augmenting its ability to secure highly accurate evidence and that the NDCAC's role is to address the huge chasm that exists between today's available technologies and law enforcement's role, needs, and current capabilities.

Mr. Modafferri concluded his remarks by sharing his thoughts regarding the NDCAC's ability to have a positive productivity impact on the work product of law enforcement nationwide and that the NDCAC will function to promote the efforts of local, State and Federal agencies within the legal framework that is entrusted to law enforcement.

The meeting continued with a report from Jim Saunders, the Chairman of the EAB's Administrative Subcommittee. Mr. Saunders recognized the members of the Subcommittee for their respective contributions (i.e., Peter Modafferri, George Turner, Derrick Driscoll, Sherry Sabol, Alice Bardney-Boose, as well as FBI and NDCAC staff). The Administrative Subcommittee worked to address two issues: identifying a recommended candidate for the position of NDCAC Director and drafting NDCAC EAB Bylaws.

With respect to the position of NDCAC Director, the Administrative Subcommittee held numerous discussions regarding the factors to be considered when identifying a candidate. Those factors included, but were not limited to the qualifications, eligibility, and desired

experience of any candidate. The Administrative Subcommittee consulted with internal FBI human resource personnel about the agency's hiring process and options to consider candidates from local, State, and Federal agencies. Mr. Saunders stated that after careful consideration of all relevant factors, the Administrative Subcommittee determined that the current Interim Director, Ms. Marybeth Paglino, represented the best choice to fill the position. Mr. Saunders proceeded to read into the record the recommendation of the Administrative Subcommittee (see **Appendix E**).

A motion to accept the recommendation was made by Mr. Saunders and seconded by Mr. Driscoll. The members of the EAB unanimously approved the recommendation.

Mr. Saunders continued his report of the Administrative Subcommittee describing the work to draft NDCAC EAB Bylaws. Mr. Saunders thanked the members of the Subcommittee and NDCAC staff for their respective contributions to the development of the Bylaws. Mr. Saunders stated the Subcommittee worked to ensure there was no contradiction between the charter of the NDCAC EAB and the Bylaws. Members of the EAB had been provided a copy of the draft Bylaws in advance of the meeting. Mr. Modafferri motioned for the full NDCAC EAB to adopt the draft Bylaws; Mr. Keel seconded the motion. The members of the EAB unanimously approved the draft Bylaws (see **Appendix F**).

Mr. Saunders continued the Administrative Subcommittee portion of the meeting by informing the EAB that he will lead the Subcommittee in developing a process to identify and recommend candidates for the NDCAC Deputy Director. Members of the EAB stressed the need to move expeditiously in developing a recommendation for the NDCAC Deputy Director. Members discussed the length of term of such a position; the likelihood of a local or State agency committing to staff the position with a current member of its staff; and incorporating the input of the NDCAC Director in formulating the qualifications, eligibility, and desired experience of potential candidates. Mr. Saunders concluded the Administrative Subcommittee portion of the meeting with a commitment to move forward on the NDCAC Deputy Director.

The meeting continued with a presentation by Ms. Erika Brown Lee, the US Department of Justice (DOJ) Chief Privacy and Civil Liberties Officer. Ms. Lee's presentation focused on her role in ensuring compliance with DOJ privacy policies (see **Appendix G**). Ms. Lee informed the participants in the meeting of how the DOJ uses the Fair Information Practice Principles (FIPP) as a foundation for consistent application of privacy policies. She identified the need for law enforcement organizations to be transparent and notify individuals regarding collection use, dissemination, and maintenance of personally identifiable information (PII) when practicable for law enforcement. Ms. Lee stated that law enforcement organizations should articulate the legal authority for and the purposes and uses of its collection of PII and that such articulation is required under the Privacy Act.

Ms. Lee continued by stating that law enforcement organizations should protect PII (in all media) through appropriate security safeguards against risks such as loss, unauthorized access or use, destruction, modification, or unintended, or inappropriate disclosure. She also stated that law enforcement should be accountable for complying with these principles by providing training on these principles to all employees and contractors who use PII, and auditing the use of

PII to demonstrate compliance with these principles. Ms. Lee concluded her presentation by describing the Bureau of Justice Assistance Global Justice Information Sharing Initiative.

Mr. Modafferri opened a group discussion about the NDCAC EAB's need to establish an additional Subcommittee – one focused on the technology impacting law enforcement. The rationale for establishing a Technology Subcommittee is based on the need to identify areas of focus for the NDCAC and to assist the EAB in recommending priorities for the NDCAC (i.e., services and technologies of greatest interest to the law enforcement community) so it could most effectively utilize its limited resources for the greatest benefit to its constituency. In addition, a Technology Subcommittee could draft a semi-annual report that would satisfy the requirement of the NDCAC EAB Charter for it to provide advice to the Attorney General regarding: the technical challenges facing law enforcement agencies with respect to lawfully authorized electronic surveillance, collection of communications evidence, and technical location capabilities; programs, operations, systems and management of the NDCAC; the effectiveness of the NDCAC; and other issues relating to the core functions of the NDCAC.

Mr. Modafferri solicited the group for someone to lead a Technology Subcommittee as chair. Prior to forming a Subcommittee, members of the EAB discussed the need to gain insight into the technical impediments faced by law enforcement by leveraging technical members of the law enforcement community that stay current with new and emerging services and technologies that may have a detrimental impact on their respective capabilities to conduct lawful intercept. Mr. Saunders motioned that the formation of a Technology Subcommittee be tabled and that two law enforcement representatives (one local or State representative, and one Federal representative) be invited to the next meeting of the EAB. Ms. Erichs seconded the motion, and the motion was approved unanimously.

Mr. Modafferri moved to the last item on the agenda, the acknowledgement of comments submitted by interested parties in response to the public notice of the meeting. Ms. Bardney-Boose informed the group that no comments had been received.

Mr. Modafferri solicited the group regarding the next meeting of the NDCAC EAB. The group agreed to schedule a meeting in approximately six months. Ms. Bardney-Boose will coordinate with the group regarding meeting logistics and address the administrative requirements of holding the next public meeting.

Ms. Bardney-Boose thanked the members for participating and adjourned the meeting.

Appendices cited in these minutes are available separately.